

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANDREW JAMES MORRIS,

Petitioner,

No. CIV S-02-0385 FCD GGH P

vs.

FREDERICK K. BROWN, et al.,

Respondent.

ORDER

Petitioner is a state prisoner proceeding through counsel with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges his 1997 conviction for first degree murder.

In the answer, respondent argues that this action is barred by the statute of limitations. In his reply memorandum, citing 28 U.S.C. § 2244(d)(1)(D) petitioner's counsel argues that petitioner is mentally incompetent and that the limitations period began to run at the time petitioner knew or reasonably should have known the basis of his claims. Alternatively, the court finds that petitioner is arguing that he is entitled to equitable tolling due to mental incompetence. Laws v. LaMarque, 351 F.3d 919 (9<sup>th</sup> Cir. 2003).

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Petitioner has proffered no evidence in support of his claim that his mental incompetence prevented him from filing a timely federal petition. Petitioner is not entitled to an evidentiary hearing based on counsel's unverified and unsupported allegations.

Accordingly, IT IS HEREBY ORDERED that petitioner is granted thirty days from the date of this order to submit evidence in support of his request for an evidentiary hearing; following receipt of that evidence, the court will determine whether an evidentiary hearing is warranted.

DATED: 10/28/05

/s/ Gregory G. Hollows

GREGORY G. HOLLOWS  
UNITED STATES MAGISTRATE JUDGE

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